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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 158

JESSE C. BADER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

WM. SCOTT STEWART,
Counsel for Appellant.

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STATEMENT OF JURISDICTION.

Appellant was prosecuted by indictment, charged with the crime of manslaughter, and by final judgment of the Criminal Court of Cook County was sentenced to the penitentiary. Appellant thereafter sued out a writ of error in the Supreme Court of Illinois which was made a supersedeas, and appellant is now on bail fixed at $10,000 with sureties approved by said court. The judgment of the Criminal Court of Cook County was affirmed. A petition for rehearing was duly filed and overruled on December 6, 1939, at which time the judgment above referred to was made final, insofar as the Supreme Court of Illinois is concerned, and a stay of mandate was later allowed in order that this petition might be made.

Section 6 of Article 8 of the Constitution of 1818 and Section 6 of Article 13 of the Constitution of 1848 (of Illinois) provided that the right of trial by jury should remain inviolate. Section 5 of Article 2 of the present Constitution, "The right of trial by jury as heretofore enjoyed shall remain inviolate." Section 9 of the same article provides that in all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. This right to a speedy public trial is incorporated in the same section with other constitutional rights of a person accused of crime, namely, to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses face to face and to have process to compel the attendance of witnesses in his behalf. Each of the two earlier constitutions contained similar provisions. Const. 1818, art. 8, sec. 9; Const. 1848, art. 13, sec. 9.

In the case at bar, appellant waived a trial by jury in the trial court. In the Supreme Court of Illinois, by his 4th and 5th assignment of error (Abstract Page 40), he contended that when the jury was waived and the court attempted to sit without a necessary part of the court under the laws and the constitution of the State, the court was without jurisdiction, and appellant was deprived of due process of law as guaranteed by the XIV Amendment of the Constitution of the United States. This contention was duly briefed and argued by appellant and disposed of contrary to the contention of appellant, the Supreme Court of Illinois having relied upon the case of *People* v. *Fisher*, 340 Ill. 250.

So therefore appellant claims that the trial court was without jurisdiction for the reason that no jury was called; that the Statute of Illinois making a jury judges of the law, as well as the facts in criminal cases, is constitutional

and makes a jury indispensable where a plea of not guilty is interposed. Appellant claims that the affirmance of the judgment against him by the Supreme Court of the State of Illinois deprived appellant of due process of law as guaranteed by the XIV Amendment of the Constitution of the United States.

WM. SCOTT STEWART,
Counsel for Appellant.

EXHIBIT "A".

Docket No. 25200—Agenda 1—June, 1939.

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

JESSE C. BADER, Plaintiff in Error.

MR. JUSTICE SHAW delivered the opinion of the court:

On August 26, 1938, Richard Fleming, an eight-year-old boy, a pedestrian, then crossing Washington boulevard at its intersection with Ridgeland avenue in the village of Oak Park, was struck and instantly killed by an automobile which the defendant was then driving. An indictment charging defendant Bader with manslaughter based upon these facts was returned in the criminal court of Cook county. Thereafter, on trial before the court and without a jury, the defendant was found guilty, judgment on that finding was entered against him and he was sentenced to the penitentiary for an indeterminate term of one to fourteen years. This writ of error seeks a reversal of that judgment.

To secure such a reversal two principal contentions are made: First, that the finding does not prove the defendant guilty beyond a reasonable doubt and, second, that a jury is an indispensable part of a court in the trial of a criminal case, upon which it is urged that our holding to the contrary in *People* v. *Fisher*, 340 Ill. 250, was wrong and should be overruled.

The evidence is so clear and convincing that we will not state it in detail. An examination of the record shows that eight witnesses for the People testified that the defendant drove through a red light at the intersection where the boy was killed and these witnesses all estimated the speed of his car at from forty to fifty miles an hour. Some of these witnesses identified the defendant as the driver and they all agreed that the driver neither slackened his speed nor appeared to make any effort to stop at the time in question. Two of these witnesses testified that they pur-

sued the fleeing car for several blocks, but lost it in traffic. It was further proved that the car which had caused the accident and which was owned by the defendant, was found by the police two or three days later in a garage near his home, with the radiator grill dented and partially bashed in and still showing traces of blood and hair.

The defendant testified in his own behalf that he was returning to Chicago at the time of the accident, which was late in the afternoon, but still daylight, and that he and his housekeeper had made a round trip from Chicago to St. Louis that day. He testified he did not remember having gone through a red light and that if he struck any one he did not know it and was not traveling at an excessive rate of speed at the time and place in question. However, several of the witnesses for the People identified him as the driver of the car and his own testimony showed that he had traveled that particular boulevard at about the time of the accident.

We will not reverse a conviction on a question of fact unless, upon the entire record, we feel there is a grave and substantial doubt as to the guilt of the defendant, nor will we, under such circumstances as are disclosed by this record, attempt to substitute our judgment for that of the trial court or jury which heard the evidence and saw the witnesses. (*People* v. *Fortino,* 356 Ill. 415; *People* v. *Bolger,* 359 id. 58; *People* v. *Mangano,* 356 id. 178.) The record in this case fully sustains the findings of the trial court.

As to defendant's second contention,—*i. e.,* that a jury is an essential part of a court in the trial of a criminal case and that it cannot be waived by defendant, we have only to say that we held to the contrary in *People* v. *Fisher, supra;* that all of the arguments now urged were considered and decided in that case and that we adhere to what we then held.

The judgment of the criminal court of Cook county is affirmed.

Judgment affirmed.

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SUPREME COURT OF THE UNITED STATES

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No. 158

JESSE C. BADER,

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

JOHN E. CASSIDY,
Attorney General of Illinois.

A. B. DENNIS,
Assistant Attorney General.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 158

JESSE C. BADER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

STATEMENT DISCLOSING MATTER OR GROUNDS MAKING AGAINST THE JURISDICTION OF THIS COURT ASSERTED BY THE APPELLANT AND MOTION BY APPELLEE TO DISMISS APPEAL.

The grounds upon which appellant contends this Court has jurisdiction of this case are based upon the fact that the appellant waived a trial by jury in the Criminal Court of Cook County and was tried by the court without a jury.

Counsel for appellant contends that this was in violation of Section 5 of Article II of the Constitution of Illinois, which provides:

> "The right of trial by jury as heretofore enjoyed shall remain inviolate."

Counsel for appellant also contends that this was in violation of Section 9 of Article II of the Constitution of Illinois, which provides, among other things, that:

> "In all criminal prosecutions the accused shall have the right to * * * a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

Counsel for appellant further contends that the trial of appellant by the court, without a jury, was the denial of the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, which provides, in part, as follows:

> "* * * nor shall any state deprive any person of life, liberty or property, without due process of law, * * *."

These contentions of counsel for appellant are unsound and untenable for the reason that the Supreme Court of the State of Illinois, in the case of *People* v. *Fisher*, 340 Ill. 250, at page 265, held:

> "* * * that the defendant in a criminal prosecution, whether the charge be a felony or a misdemeanor, has the power, upon a plea of not guilty, to waive a jury trial; and we do not adhere to what was said to the contrary in the cases of *Harris* v. *People, supra; Morgan* v. *People, supra; Brewster* v. *People, supra; Paulsen* v. *People, supra.*"

This case was very largely predicated upon the case of *Patton* v. *United States*, 281 U. S. 276. In this case, the Supreme Court of the United States said, at pages 296, 297:

> "The record of English and colonial jurisprudence antedating the constitution will be searched in vain for evidence that trial by jury in criminal cases was regarded as a part of the structure of government, as

distinguished from a right or privilege of the accused. On the contrary, it uniformly was regarded as a valuable privilege bestowed upon the person accused of crime for the purpose of safeguarding him against the oppressive power of the king and the arbitrary or partial judgment of the court. Thus Blackstone, who held trial by jury both in civil and criminal cases in such esteem that he called it 'the glory of the English law,' nevertheless looked upon it as a 'privilege,' albeit 'the most transcendent privilege which any subject can enjoy,' Book 3, p. 379. And Judge Story, writing at a time when the adoption of the constitution was still in the memory of men then living, speaking of trial by jury in criminal cases said: 'When our more immediate ancestors removed to America, they brought this great *privilege* with them, as their birthright and inheritance, as a part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our State constitutions as a fundamental *right*, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms.' (2 Story on the Constitution, sec. 1779.) In the light of the foregoing it is reasonable to conclude that the framers of the constitution simply were intent upon preserving the right of trial by jury primarily for the protection of the accused. If not, and their intention went beyond this and included the purpose of establishing the jury for the trial of crimes as an integral and inseparable part of the court, instead of one of its instrumentalities, it is strange that nothing to that effect appears in contemporaneous literature or in any of the debates or innumerable discussions of the time. This is all the more remarkable when we recall the minute scrutiny to which every provision of the proposed constitution was subjected. The reasonable inference is that the concern of the framers of the constitution was to make clear that the right of trial by jury should remain inviolable, to which end no language was deemed too imperative. That

this was the purpose of the third article is rendered highly probable by a consideration of the form of expression used in the sixth amendment."

From these authorities it seems clear that there was no denial of due process of law in this case and that this Court has no jurisdiction in the matter. The People of the State of Illinois, appellee, therefore move the Court to dismiss the appeal in this case for want of jurisdiction.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee,

By JOHN E. CASSIDY,
Attorney General of the State of Illinois.

A. B. DENNIS,
Assistant Attorney General,
Of Counsel